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16 December 2004

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*By facsimile: (214) 740-8800
and email*

**CONFIDENTIAL COMMUNICATION SUBJECT TO RULE 408 OF THE
FEDERAL RULES OF EVIDENCE AND STATE COUNTERPARTS, AS WELL AS THE
LETTER AGREEMENT DATED JULY 28, 2004**

Re: OrthAlliance, Inc. litigation

Dear Mr. Colao:

This letter agreement is binding upon our clients, as specifically identified. My clients, OrthAlliance, Inc., OrthAlliance New Image, Inc., and OCA, Inc., f/k/a Orthodontic Centers of America, Inc. (collectively, "OrthAlliance") have authorized me to sign on their behalves. Your clients and their practices, as shown above your signature block, have authorized you to sign on their behalves. Your clients shall be called "the Doctors." OrthAlliance and the Doctors shall hereinafter be collectively referred to as the "Parties."

Our agreed terms are as follows.

1. **Stand Still Agreement (the "Agreement").** Except as stated herein, the Parties mutually agree to an immediate stand still of all pending litigation matters. This Agreement shall terminate on January 31, 2005, unless otherwise extended by the mutual agreement of the parties hereto. The purpose of this Agreement is to permit the parties to focus their time and attention on organizing and preparing for a global mediation/settlement conference before Judge Phillip P. Simon of the United States District Court for the Northern District of Indiana, Hammond Division (the "Settlement Conference"). The Parties will immediately initiate that effort, in good faith, with assistance from Judge Simon. Specifically, the parties will ask



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Judge Simon to arrange a meeting, either in person or by telephone, in early January to facilitate the process of creating the mediation/settlement conference.

This Agreement shall include, but not be limited to:

- a. All discovery, motions, or other litigation matters between the Parties;
- b. All outstanding discovery between the Parties shall be stayed until January 31, 2005, unless agreed otherwise. At that time, we will agree to reset the following discovery matters:
 - i. *DeVito*: the depositions of Tony Paternostro, Paul Ouellette and Joel McAliley.
 - ii. *Hanson*: any necessary discovery for summary judgment motions.
 - iii. *KCO*: any outstanding written discovery and the deposition of Tony Paternostro.
 - iv. *General*: the depositions of The McCarthy Group and Kelly McCrann in all cases where discovery is open, including *KCO*.
- c. As soon as practicable, we will mutually petition the following courts to extend the following deadlines:
 - i. *KCO*: We will file a joint motion to allow the prompt completion of discovery and to reschedule the remaining deadlines reflected in the court's order of August 23, 2004 (including the trial, only if necessary, and only for a short a period of time as may be necessary to complete any pretrial matters) consistent with manner in which those deadlines are currently scheduled.
 - ii. *Scott and Garner*: We will file a joint motion to extend all pretrial conferences.
 - iii. *Greenbaum*: We will file a joint motion to extend the due date for the summary judgment reply.
 - iv. *Hester/Fender*: We will file a joint motion to extend the deadlines for the designation of all experts and

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OrthAlliance's reply in support of its motions for summary judgment.

v. *Hanson*: We will file a joint motion to extend the deadline for dispositive motions and discovery related to dispositive motions.

vi. *Others*: As other events not expressly stated herein arise or are recognized, the parties will agree to file joint motions consistent with this abatement for purposes of facilitating settlement.

d. The Parties will refrain from filing further suits or arbitration actions against one another until January 31, 2005, unless otherwise extended by agreement. The running of any statutes of limitations or other time based defenses will be tolled until January 31, 2005, unless otherwise extended by agreement.

From the date of this agreement
[Signature]

2. The parties expressly agree that this Agreement does not apply to the following:

- a. The resumption of the *Snow et al.* summary judgment motions set for oral argument on December 21, 2004 in Los Angeles, California, or as may otherwise be reset or continued by the Court or the agreement of the parties;
- b. The *Lee* eviction proceeding in Santa Clara, California, and the related motions for coordination, TRO, preliminary injunction, and contempt before Judge Mohr in Los Angeles, California;
- c. Any matter currently on appeal;
- d. The filing of the Joint Motion to Abate in the *Potter* state court litigation in Fort Worth, Texas;
- e. The breach of settlement litigation involving Dr. Yaffey (who is no longer part of the Doctors) in Miami, Florida;
- f. Execution or performance of any previously negotiated settlement agreement, including those involving OrthAlliance and any of the following: Dr. Cohen, Dr. Togrye, Dr. Pence, Dr. Lahrman, Dr. Simons, Dr. Humphries, and any other doctors with whom settlement agreements may be reached before the expiration of this Agreement; and

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- g. Any matter where a court refuses to extend a deadline pursuant to a joint motion as outlined in Paragraph 1(c).
3. The Parties will give this Agreement to Judge Simon. The Parties mutually agree that they shall not unilaterally notify any other Court of this Agreement except by agreed motion or other agreed means. The Parties expressly agree and understand that this Agreement is not binding on any Court. Thus, the Parties agree and understand that one or more Courts may issue rulings, decisions, or orders that may materially affect the Parties' positions at the Settlement Conference. Notwithstanding this risk, the Parties agree to enter into this Agreement and further agree that this Agreement shall not be grounds for arguing that a Court should refrain from ruling on any currently pending motions.

Signed on behalf of OrthAlliance, Inc., OrthAlliance New Image, Inc., and OCA, Inc., f/k/a Orthodontic Centers of America, Inc., their predecessors, subsidiaries, and assignees:

McCLANAHAN & CLEARMAN, L.L.P.

By: 
Scott M. Clearman

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Signed on behalf of the following individual doctors, their practices, and wholly or partially owned business that are, in anyway, owned by the individual doctors, including: Dr. Ronnie Anderson, Dr. Kirk Anderton, Dr. Hans Andringa, Dr. Ronald Barnett, Dr. Robert Borkowski, Dr. William Brady, Dr. Alicia Carroll, Dr. T. Barry Clower, Dr. Monte Collins, Dr. David Crouch, Dr. Robert Crum, Dr. Michael DeVito, Dr. Stephen Dickens, Dr. Douglas Durbin, Dr. Dana Fender, Dr. David Garner, Dr. Michael Goodwin, Dr. Joseph Gray, Dr. Kenneth Greenbaum, Dr. Michael Habern, Dr. John Hanson, Dr. Wayne Hester, Dr. Douglas Hom, Dr. John Huang, Dr. Gene Humphries, Dr. Michael Johnson, Dr. Arthur Kammerman, Dr. Lester Kuperman, Dr. Don Lahrman, Dr. Kent Lauson, Dr. Paul Lee, Dr. Karl Lugas, Dr. Ronald Maddox, Dr. Louis Mascola, Dr. Rudolf Mayer, Dr. Robert McClurg, Dr. George Mitchell, Dr. Jim Bill Morrow, Dr. Brian Nettelman, Dr. Kirk Nielson, Dr. Den Pence, Dr. Robert Penny, Dr. Ronald Perkins, Dr. Robert Pickron, Dr. Steven Potter, Dr. Bill Reeves, Dr. Mario Ricciardi, Dr. Joe Richards, Dr. Suellen Rodeffer, Dr. Victor Sands, Dr. Randall Schmidt, Dr. Gregory Scott, Dr. Charles Simons, Dr. David Snodgrass, Dr. Gilbert Snow, Dr. Les Stames, Dr. Claude Stephens, Dr. Hal Stevenson, Dr. Keith Stewart, Dr. Kurt Stormberg, Dr. Thomas Surber, Dr. Stephen Yao, Dr. Paul Yurfest.

LOCKE LIDDELL & SAPP, LLP

By: Roger Cowie
Roger Cowie

SMC/alm